

Internal Revenue Service  
District Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:  
EP/EO

Employer Identification Number:

Date: APR 18 1996

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

DN 4/2/96 DP 4/6/96

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours, 1

[REDACTED]  
C. Ashley Bullard  
District Director

Enclosures: 3

ENCLOSURE I

[REDACTED]

You were incorporated on [REDACTED] under the laws of the State of [REDACTED]. You filed Form 1023, Application For Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code on [REDACTED].

According to your application, your stated purpose is to provide assistance to needy and deserving individuals who have been overwhelmed by circumstances and are unable to independently meet challenges, which exceed or exhaust existing individual resources.

The membership of your organization consists of friends and former classmates of [REDACTED] in [REDACTED].

To date, the activities of your organization have consisted of a fund raiser, [REDACTED] and the distribution of funds to [REDACTED]. A copy of your flyer for the golf fund raiser described the event, in pertinent part, as follows:

"Our friend and classmate [REDACTED] needs our help. This year has been a very difficult one for [REDACTED], who has been in and out of the hospital for the better part of 10 months after having a tumor removed from his brain stem... Since [REDACTED]'s insurance funds have been exhausted, we hope to help him with necessary expenses... We hope that this "Golf Classic" will continue that effort to support a friend in a time of need."

Furthermore, you described a presentation that was given during the Golf Classic to explain [REDACTED]'s medical condition. The presentation included the following information:

"A cancer tumor has been removed from [REDACTED]'s brain stem, and as a consequence, [REDACTED], is severally disabled, with limited ability to walk with a walker, unable to speak, using P.C. to communicate, is a single man, requiring 24 hour care, needs a motorized wheel-chair, needs physical therapy five times a week, but receives physical therapy three times per month. Physical therapy costs \$100 per session. [REDACTED], was between jobs at the time of the outset of the illness. Has no private medical insurance, health care paid by public assistance, in addition to general living expenses provided by public assistance. Has exhausted all private resources. Resident in [REDACTED]."

We explained by our letter dated [REDACTED] and by phone [REDACTED] of the prohibition of activities conducted for the private benefit of pre-selected, specifically named individuals.

In additional information provided, you indicate [REDACTED] will not be the sole recipient of your organization's fundraising efforts. You have established the following criteria:

- a) Applicant must be a student or alumnus of [REDACTED]

However, you did not submit evidence anyone other than [REDACTED] has benefited from your operations. In our letter dated [REDACTED], [REDACTED], we asked how many individual will you assist per year. In your response received [REDACTED], you replied unknown, but anticipate one or two per year. During our conference telephone conversation of [REDACTED], you indicated you plan to continue to assist [REDACTED] in the future.

You indicate that you intend to raise funds through an annual Golf Outing. According to the financial data submitted, you raised \$[REDACTED] from the Golf Classic in [REDACTED].

You provided a detailed schedule of your expenses for [REDACTED] including \$ [REDACTED] to [REDACTED], \$ [REDACTED] to [REDACTED], \$ [REDACTED] User Fee Payment to IRS, \$ [REDACTED] Travel reimbursement for a friend who was flown to [REDACTED] to visit [REDACTED] and \$ [REDACTED] to [REDACTED]. In addition, you submitted the following schedule for the amount given to [REDACTED]:

- a) Medications

\$[REDACTED]

- b) Medical Supplies

\$ 2 Tube Trach Cuffles not paid by insurance

- ### c) Physical Therapy Equipment

Exercise Equipment [REDACTED]  
Workout Equipment [REDACTED]  
Gold's Gym Workout Machine [REDACTED]

- d) Voice Augmentation Equipment

\$[REDACTED] Computer and Software

- e) Nursing Expenses

[REDACTED], Partial of \$ [REDACTED]

During our telephone conversation of [REDACTED], you explained the position of the organization as follows:

You are law abiding citizens who want to help a friend in need.

You did not submit any evidence which would indicate you would no longer provide funds to [REDACTED] or for pre-selected specifically identified individuals. Accordingly, the position of the organization has no effect on this proposed determination.

Section 501(c)(3) of the Code provides, in part, for exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(a)-1(c) of the Regulations provides that the terms "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner of Internal Revenue, T.C. Memo. 1986-348, the tax court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care for their family member and therefore, constituted inurement to the benefit of private individuals.

The tax court held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust. See Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943).

Revenue Ruling 67-367, 1967-2 C.B. 188, holds that a nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Revenue Ruling 57-449, 1957-2 C.B. 622, holds that a trust formed to pay a certain sum to all the individuals enrolled in a particular school as of a particular date was held to be a private trust, not a charitable trust. The beneficiaries were a group of identifiable individuals.

In applying the law to the facts of the case, we conclude the following:

You are not described in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations since you are operated for the benefit of a designated individual.

Accordingly, we determined your organization serves a private interest rather than a public interest. You are similar to the organizations described in the cited court cases and revenue rulings in which exemption was denied.

You are similar to the organizations described in the court cases above because you raise funds for pre-selected individuals, rather than a general charitable class. The court held that even though the recipient(s) cited were in financial need, this did not justify exemption.

You are similar to the organization described in Revenue Ruling 67-367 because you give funds to specifically named, pre-selected individuals.

You are described in Revenue Ruling 57-449 because you give funds to identifiable individuals from a particular school.

In conclusion, we hold you are not entitled to exemption under Section 501(c)(3) of the Code.